



## **BACKGROUND**

On September 9, 2021, President Biden issued an Executive Order titled, “Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors,” requiring federal contractors to comply with all guidance published by the Task Force regarding the COVID-19 pandemic. On September 24, 2021, the Safer Federal Task Force issued the guidance required by the Executive Order. The Task Force guidance requires all “covered employees” of federal contractors to be fully vaccinated against the virus that causes COVID-19 no later than December 8, 2021 (the “Mandate”).

Union Pacific, BNSF Railway Company (“BNSF”), and Northeast Illinois Regional Commuter Rail Corporation, d/b/a Metra (“Metra”) are all rail carriers subject to the Railway Labor Act (“RLA”), 45 U.S.C. § 151 *et seq.* All three railroads have announced that they intend to implement the Mandate. The unions that represent the railroads’ employees—including Brotherhood of Locomotive Engineers and Trainmen (“BLET”), Brotherhood of Maintenance of Way Employees Division/IBT (“BMWED”), Brotherhood of Railroad Signalmen (“BRS”), and International Association of Sheet Metal, Air, Rail, and Transportation Workers (“SMART-TD”)—contend that the railroads’ implementation plans violate the RLA.

On October 15, 2021, Union Pacific filed suit against three of the Unions in this District, seeking, among other things, a judgment declaring that the dispute over its implementation of the Mandate is a “minor dispute” subject to Section 3 of the RLA. Three of the Unions filed separate lawsuits, alleging that Union Pacific is unilaterally changing terms and conditions of employment in violation of Section 2 First, 2 Seventh, and Section 6 of the RLA. On October 21, 2021, Norfolk Southern Railway Co. (“Norfolk Southern”) filed suit in this District, seeking a declaratory judgment that the parties’ dispute over its implementation of the Mandate is a “minor dispute” subject to Section 3 of the RLA. On November 8, Union Pacific, Norfolk Southern, SMART TD,

BLET and BMWED filed a joint motion seeking to consolidate Norfolk Southern's suit and the suits filed by those three unions with this one. Finally, on November 7 and November 8, BNSF and Metra, respectively, filed their own suits in this District, likewise seeking a declaratory judgment that the parties' dispute over its implementation of the Mandate is a "minor dispute" subject to Section 3 of the RLA. Thus, there are currently seven lawsuits in this District that arise from the same basic dispute as the first-filed *Union Pacific* proceeding currently pending here.

### **ARGUMENT**

Under Local Rule 40.4, actions may be reassigned if they involve common questions of law and fact. Whether to reassign cases is a decision within the sound discretion of the trial court. *Urb. & Fox Lake Corp. v. Nationwide Affordable Hous. Fund 4, LLC*, No. 18-CV-6109, 2019 WL 2515984, at \*3 (N.D. Ill. June 18, 2019). Under Local Rule 40.4, two or more civil cases that "involve some of the same issues of fact or law" are related and may be reassigned to the calendar of another judge if: (1) the related cases are pending in this Court; (2) the handling of the cases by the same judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and (4) the cases are susceptible of disposition in a single proceeding.

In this case, all of the parties to all the pending lawsuits referenced herein agree that the cases are related and should be reassigned before Judge Lee, who was assigned to the first-filed *Union Pacific* case. All of the criteria for reassignment are met.

As a threshold matter, all of the suits involve at least some of the same questions of fact and law. All of the cases concern whether the railroads' actions in connection with or in response to the Mandate implicate "minor disputes" that must be resolved in arbitration under Section 3 of the RLA or constitute unilateral changes (*i.e.*, "major disputes") that violate Sections 2 First and

Seventh and Section 6 of the RLA. Additionally, all of the cases concern whether the railroads are required to bargain with the unions over the implementation and effects of the vaccination requirement.

Moreover, all of the factors under Local Rule 40.4 favor reassignment. First, all of the cases are pending in this Court. Second, reassignment would promote judicial efficiency because the cases involve the same or similar issues. *See Lawrence E. Jaffe Pension Plan v. Household Intern., Inc.*, No. 02 C 5893, 2003 U.S. Dist. LEXIS 7466, 2003 WL 21011757, at \* 3 (N.D. Ill. May 5, 2003). Third, all of the cases are at the same early stage of proceedings. Fourth, the cases are susceptible of disposition in a single proceeding. Since this case is further along, however, we seek only reassignment of the two newly filed cases—*BNSF Railway Co. v. Brotherhood of Railroad Signalmen., et. al.*, No. 1:21-cv-05965 (N.D. Ill. Nov. 7, 2021) and *Metra v. Int’l Assoc. of Sheet Metal, Air, Rail, and Transp. Workers – Transp. Div., et. al.*, No. 1:21-cv-05988 (N.D. Ill. Nov. 8, 2021)—to this Court’s docket, not that those two cases be consolidated with the rest of the proceedings.

### CONCLUSION

For all of these reasons, the two new, related cases—*BNSF Railway Co. v. Brotherhood of Railroad Signalmen., et. al.*, No. 1:21-cv-05965 (N.D. Ill. Nov. 7, 2021) and *Metra v. Int’l Assoc. of Sheet Metal, Air, Rail, and Transp. Workers – Transp. Div., et. al.*, No. 1:21-cv-05988 (N.D. Ill. Nov. 8, 2021)—should be reassigned.

Respectfully submitted,

November 15, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that, on November 15, 2021, the foregoing Joint Motion for Reassignment was filed using the Court's CM/ECF system.

/s/ Samantha Woo

Samantha Woo